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National Electric Power Regulatory Authority

Islamic Republic of Pakistan

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No.NEPRA/TRF-92/HUBCO-2008/51-53
January 03, 2013

Subject: **Decision of the National Electric Power Regulatory Authority in the matter of Motion for Leave for Review filed by The Hub Power Company Ltd. – Narowal Project against Authority's Decision dated June 08, 2012 regarding Tariff Adjustments at Commercial Operations Date [Case # NEPRA/TRF-92/HUBCO-2008]**

Dear Sir,

Enclosed please find herewith the Decision of the Authority (08 pages) in the matter of Motion for Leave for Review filed by The Hub Power Company Ltd. against Authority's Decision dated June 08, 2012 regarding Tariff Adjustments at Commercial Operation Date, for information please.

Encl: As above

Secretary
Ministry of Water & Power
'A' Block, Pak Secretariat
Islamabad

CC:

1. Secretary, Cabinet Division, Cabinet Secretariat, Islamabad.
2. Secretary, Ministry of Finance, Islamabad.

(Syed Safeer Hussain)





DECISION OF THE NATIONAL ELECTRIC POWER REGULATORY AUTHORITY
IN THE MATTER OF MOTION FOR LEAVE FOR REVIEW FILED BY
THE HUB POWER COMPANY LIMITED - NAROWAL PROJECT
AGAINST AUTHORITY'S DECISION DATED JUNE 08, 2012 REGARDING
TARIFF ADJUSTMENTS AT COMMERCIAL OPERATIONS DATE

1. Introduction

1.1 The Hub Power Company Limited - Narowal Project (hereinafter referred to as "HNPP"), after commencing commercial operations for its plant bearing Generation License No. IGSPL/19/2008, located at District Narowal Punjab, filed a request for adjustment in its reference tariff, in accordance with the Authority's determination dated May 23, 2008 (hereinafter referred to as "the determination"). The Authority considered the request of HNPP and gave its decision in the matter of adjustments in generation tariff of HNPP at the commercial operations date on June 08, 2012 (hereinafter referred to as the "COD decision"). Being aggrieved with the said decision, HNPP submitted a motion for leave for review on June 22, 2012 under rule 16 (6) of the NEPRA (Tariff Standards and Procedure) Rules, 1998 (hereinafter referred to as the "tariff rules"). On initial scrutiny, few shortcomings were observed which were communicated to HNPP. After addressing the shortcomings, HNPP again filed the motion for leave for review on June 28, 2012.

1.2 In the motion for leave for review, HNPP sought review of the COD decision regarding following issues:-

- a) Interest during construction
 - i) Use of equity money's borrowing rate in computation of interest during construction
 - ii) Construction period allowed for interest during construction calculations
- b) Land acquisition and development costs,





- c) Engineering, procurement and construction costs
 - i) Letter of credit confirmation costs
 - ii) Cost of two additional over-headlines
 - iii) Cost of relocation of metering system
- d) Import duties and taxes

2. Proceedings

- 2.1 The motion for leave for review was filed by HNPP after ten days of service of the COD decision. However, the Authority after considering circumstances of the case and grounds of the motion for leave for review decided to condone the delay. In accordance with rule 16 (7) of the tariff rules, the Authority considered it just and appropriate to provide an opportunity of hearing to the parties to the proceedings. The Authority accordingly gave directions for service of notices to HNPP and other concerned parties for attending the hearing. The hearing in the matter was conducted on August 02, 2012 at NEPRA main office and the same was attended by the representatives of HNPP and Private Power And Infrastructure Board (hereinafter referred to as the "PPIB").
- 2.2 Having heard the contentions raised during the course of hearing and after going through the relevant record, the findings of the Authority on the issues agitated by HNPP are as under:-

3. Interest during construction

3.1 Use of equity money's borrowing rate in computation of interest during construction

- 3.1.1 HNPP has submitted that the Authority while deciding the quantum of interest during construction (hereinafter referred to as "IDC") has not differentiated between the two debts obtained by HNPP for financing the project. The debt facility arranged by HNPP to finance its equity obligations has also been considered as a debt. HNPP has submitted that had Narowal project been a separate legal entity, the Authority





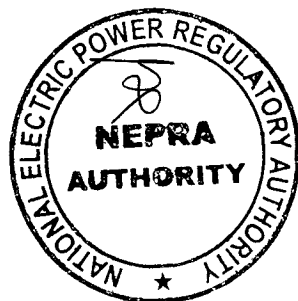
would not have asked where the equity money came from as it did not ask the other comparable independent power producers for the source of their equity money. HNPP elaborated that if an investor invests US\$ 60 million of equity into a project by creating a separate legal entity, then the Authority would not dilute their IRR even if it knew that equity money was obtained as a debt from a financial institution at below 3% rate because in that case, money would have been injected as a capital and not as a debt.

3.1.2 HNPP added that it is an established fact that debt of a Greenfield project based on 'without recourse financing' carries a higher interest rate compared to the interest rate on debt available to an already established healthy institution. It further submitted that the Authority has deprived HNPP from its promised rate of return by adopting the weighted average approach to arrive at an imputed interest rate for the computation of IDC.

3.1.3 The Authority has noted that contrary to submissions made now, HNPP in fact itself opted for the establishment of Narowal project without incorporation of a separate legal entity. At the time of grant of generation license, HNPP through letter Ref No. 031_neptra_wmk dated 23 May 2008 submitted as follows:

"Financing arrangements on fast track basis and on favorable terms: HUBCO is a company of substance with a healthy balance sheet. HUBCO has been a good borrower and has been repaying its loans in time thereby creating a lot of goodwill with the lending institutions. In light thereof, it would be quicker and cheaper for HUBCO to get a loan for itself than for its subsidiary considering there would be a corporate veil between the two affiliated yet separate legal entities. The Power Purchaser would be co-beneficiary of the quicker and cheaper loan for the project."

3.1.4 The Authority noted that this submission of HNPP was considered by the Authority while granting generation license to HNPP. Clause 15 of the Authority determination in the matter of grant of generation license to HNPP reads as follows:





"It was explained that HUBCO with good balance sheet enjoying good terms with borrowers by paying its loans in time enjoyed a lot of goodwill and reputation with lending institutions. It would be rather easier for HUBCO to arrange the required financing on cheaper rates for itself rather than for any of its new subsidiary companies considering that these would be separate legal entities. The power purchaser would also be beneficiary of the cheaper loan for the project in the proposed scheme".

The Authority noted that keeping in view this advantage, HNPP was allowed to implement the project without incorporating a separate legal entity. The Authority further observed that HNPP is now claiming that the entire benefit of debt availed at lower interest rate should be retained by HNPP and the entire cost of other debt obtained at higher interest rate is requested to be passed on to the consumers which is contrary to its earlier submissions of 2008 on this issue and the requested treatment will be prejudicial to the interest of consumers.

- 3.1.5 The Authority further observed that HNPP has failed to produce any new evidence or point out any mistake or error apparent on the face of record which necessitates the review of earlier decision on this issue. The Authority therefore maintains its earlier decision on this subject.

3.2 Construction period allowed for IDC calculations

- 3.2.1 HNPP submitted that due to financial meltdown of 2008 and its impact on Pakistan, its financial close took place only eleven months prior to its required commercial operations date. However during this period, HNPP kept the project going by injecting its own money into the Narowal project which gave the desired confidence to the lenders and other stakeholders. HNPP added that delay in its financial close resulted in a period of only eleven months between the availability period of the debt and its required commercial operations date as a result it got only eleven months of





IDC on its long term debt which is a very small period for any project to achieve commercial operations date (hereinafter referred to as "COD"). HNPP added that this treatment is against the principle of justice because delay in financial close was caused by the factors which were beyond its reasonable control. HNPP has requested the Authority to allow it IDC for at least 16.77 months which was allowed to Atlas Power and is the lowest duration allowed to any IPP under the 2002 power policy other than HNPP.

3.2.2 PPIB in its comments submitted vide letter no. 6(618)/PPIB/HUBCO/12/Fin dated: October 12, 2012 has requested the Authority to reconsider the construction period allowed to HNPP in line with the construction period allowed to other similar projects. NTDC vide its letter no. GM/WPPO/7778-7779 dated September 28, 2012 addressed to the MD PPIB has submitted as follows:

"The request of M/s. HUBCO Narowal Power Project for extension of COD cannot be supported because of following reasons:

1. *It appears that NEPRA allowed COD upto 31st March 2010 on the basis of COD fixed in LOS issued to the Company by PPIB. Therefore it was not an inadvertent determination.*
2. *As per Company's letter dated 10th March 2012, the Company did achieve financial close in March 2009 i.e. within timeline given in the LOS. As such there was no delay in achieving financial close.*
3. *At this belated stage it not advisable to re-open matter of a milestone which was completed two (2) years ago. Whatever the*





merits of the case such retrospective actions by public sector entities create misgivings and negative publicity.”

3.2.3 The Authority has noted that HNPP was implemented as a fast track project and, in the COD decision, has been allowed IDC upto it's required commercial operations date of March 31, 2010 in accordance with the terms of its determination and power purchase agreement. The contention of HNPP cannot be considered in the light of relevant facts and circumstances of the case therefore, the Authority maintains its earlier decision on this subject.

4. Land acquisition and development costs

4.1 HNPP has submitted that it does not agree with the assertions of the team of professionals of the Authority cited in the COD decision regarding access road passing in front of the power plant. The team of professionals of the Authority had reported that the said road is owned and maintained by the Provincial Government and no up gradation at all was found to be done on the above mentioned portion of the road, as it was in the same condition as rest of the road. HNPP in support of its claim submitted completion certificate no. 426 (A) dated: August 13, 2011 signed by the Executive District Officer, Works and Services, Narowal and some other documentary evidences. HNPP has requested the Authority to reconsider its position on this item and allow actual costs incurred by HNPP.

4.2 The Authority has observed that in the COD decision, claim of HNPP has been restricted to the extent of costs/adjustments allowed in the determination and there was no financial impact of the report of its team of professionals on the costs under this head allowed to HNPP. The Authority further noted that the treatment allowed to HNPP for this cost, is consistent with the treatment allowed to other comparable IPPs. The Authority therefore maintains its earlier decision on this subject.





5. Engineering, procurement and construction costs

- 5.1 HNPP has requested the Authority for allowing letter of credit confirmation charges of US \$ 4.06 million, cost of two additional over headlines of US \$ 2.13 million and cost of relocation of metering system of US \$ 0.49 million.
- 5.2 The Authority has noted that all the grounds submitted by HNPP in its motion for leave for review have already been considered by the Authority while arriving at its COD decision. HNPP has failed to produce any new evidence or point out any mistake or error apparent on the face of record in respect of any of the aforementioned costs. The Authority therefore maintains its earlier decisions on this subject.

6. Import duties and taxes

- 6.1 HNPP has submitted that an amount of Rs. 2.86 million withholding tax has been disallowed by the Authority due to absence of documentary evidence. HNPP has requested the Authority to allow this amount of Rs. 2.86 million, because this is a liability of HNPP and will be paid on clearance of EPC contractor dues.
- 6.2 The Authority has noted that HNPP has failed to produce authentic documentary evidence in support of its claim therefore the Authority maintains its earlier decision on this subject.
7. In the light of above discussion, Authority is of the view that HNPP has failed to bring any new and important matter of evidence which was not considered by the Authority at the time of passing of COD decision and has also failed to point out any mistake or error apparent on the face of record. The fact of matter which is also evident from the perusal of COD decision is that all material facts and circumstances were in the knowledge of the Authority and the record clearly shows that the Authority issued the decision after consideration of all material facts and documents. Therefore, the Authority is of the view that the motion for leave for review cannot be

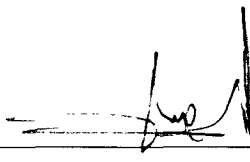


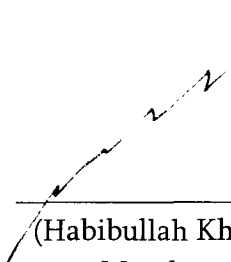


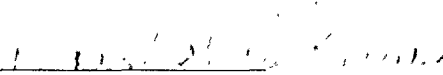
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considered in terms of regulation 3 (2) of NEPRA (Review Procedure) Regulations, 2009 read with rule 16 (9) of tariff rules and the same is hereby dismissed.

AUTHORITY


(Khawaja Muhammad Naeem)
Member


(Habibullah Khilji)
Member


(Shaukat Ali Kundi)
Member

Retired
(Ghiasuddin Ahmed)
Acting Chairman/ Member

